

July 27 PFML Rulemaking Hearing

JASON BARRETT:

Alright, we will go ahead and get started, good morning everyone, my name is Jason Barrett, through a couple housekeeping items before we begin the hearing.

Just a reminder, this meeting is in regards to proposed regulations regarding the Washington State Paid Family and Medical Leave Act program. This meeting will not feature discussion of any specific PFML application or claim an attendant is completely optional. If you have questions regarding your claim, you can call our customer care team at 833 – 717 – 2273.

That is 8337172273.

Today's hearing is regarding rules that will implement changes to title V OARC W that passed the legislature earlier this year as House Bill 1073 and SB 5097. If you would like to provide written comments related to these rules, you may do so by emailing rules@esd.wa.gov. We will continue to accept written comments to the close of business today.

To view the electronic version of the proposed rules you can go to paidleave.wa.gov/rulemaking.

Again that is paidleave.wa.gov/rulemaking. Under the current rulemaking heading, click on the + to the right of the first set of rules, title 2021 legislation implementation. The rules for today's hearing are at the third bullet down under proposed rules.

Clicking on each topic will open the proposed rules for that topic. We'll go through each of those topics in order during the hearing.

Before we begin, are there any questions about the purpose of today's meeting or where to find the proposed rules? Remember, you can meet yourselves using your team's window or by hitting *6 if you are joining by phone. And then again by joining *6. Are there any questions or comments before we begin?

Alright, hearing none will go ahead and get started. Pursuant to the authority given under Washington state law RCW 50 a.5. Osage so, chapter 42.30 RCW of the open Public meetings act, and chapter 34.05

of the administrative procedure act, this hearing is hereby convened. At 9:04 AM on July 27, 2021 online and by conference call.

This hearing is convened to consider testimony considering paid family and medical leave rulemaking. At a high level, this rulemaking amend existing rules and creating new rules that department considers necessary for the implementation of past legislation.

Notice of this hearing was filed with the Washington State register on June 22, 2021, as WSR number 21 – 13 – 161, was sent to interested parties, and was posted on the department webpage.

My name is Jason Barrett and I'm the lead policy analyst for the Leave and Care Division of the Washington State employment Security Department.

I represent Commissioner Cami Feek is the hearing officer presiding at this public rulemaking hearing. There are staff members from the leave and care policy team attending the hearing by phone. Please introduce yourselves by name and title.

BRETT CAIN:

Good morning I am a policy analyst with a leading care division of the Department.

JANETTE BENHAM:

Good morning I am Jeanette I am the (indiscernible) from the leading security department.

APRIL AMUNDSON:

(Static)

JASON BARRETT:

Please be advised that this hearing is being transcribed by a court reporter and the transcript will be, a part of the official rulemaking file. To facilitate this transcription, please state and then spell your name before your testimony.

Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing we are unlikely to answer any questions you may ask. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can be emailed to us at paidleave@esd.wa.gov, again that it's paid leave one word, at ESD.WA.gov, where our customer support staff will respond to your question.

Written comments on the proposed rules will be accepted through today by email at rules@esd.wa.gov.

A concise explanatory statement for the agency's reasons for adoption of the rules, including a summary and response to all comments received after the publication of the proposed rules, will be placed in the permanent rulemaking file and posted online. This document will be sent to all interested parties who have signed up to receive paid family and medical leave emails.

We will begin with Janette Benham who will provide a brief explanation of the proposal.

JANETTE BENHAM:

Thank you Jason, the Paid Family and Medical Leave Act was passed by the Washington State Legislature in 2017. On January 1 of 2019, employers began assessing premiums on employee wages. Since January 1 of 2020, Washington workers have been able to apply for paid family or medical leave benefits.

The 2021 legislative sessions of the passage of two bills that impact the Paid Family and Medical Leave Act program. HP 1073 temporarily creates additional qualifying periods for Washingtonians whose employment was affected by COVID-19.

Senate Bill 5097 permanently amend the program's definition of family member to reflect a more modern understanding of Washington families.

Today's hearing will discuss rulemaking related to the passage of these two important bills. We encourage you all to read the text of the rules for a more robust understanding and thank you for your interest and participation in our rulemaking efforts to administer this important program, and we look forward to hearing your comments today.

JASON BARRETT:

Thank you Jeanette, we will now hear testimony from those in attendance. All attendees are currently muted, if you wish to speak, you can unmute yourselves through your team's window or by pressing*six if you are joining by phone.

When you testify, please speak clearly, state your name, spell your last name, and state will you represent if you are here in a representative capacity.

When you finish testifying, please move yourself through your teams window or hit*six again on your phone.

We are now ready to accept public comment from those joining us in attendance today, are there any comments on the definition section of the proposed rules?

Remember, everyone on the call is currently muted to have some background noise control, so, if you do wish to provide testimony you can unmute yourself through your team's window, or if you're joining us by phone, you can hit*six on your phone to unmute yourself.

Alright, hearing no comments on the definition section we will move on to the premium calculation section of the proposed rules. Is there anyone willing to provide testimony for the premium calculation section of the proposed rules?

Hearing none, we will move on to the next section. Is there anyone wishing to provide testimony on the voluntary plans section of the proposed rules?

I'm sorry can you start again?

SPEAKER:

Hello, hi this is Marilyn of the economic opportunity Institute, I did have a comment on the voluntary plans proposed rule section, so, my comment is this, employers with voluntary plans should be required to inform employees who might qualify for the pandemic leave assistance grants of that opportunity for them? And that that is available to them, rather than just sort of leaving it, otherwise those employees are very unlikely to be aware of the fact that they are eligible for the program.

JASON BARRETT:

Thank you for that comment Marilyn. Is there anyone else who would like to provide testimony on the voluntary plan section of the proposed rules?

Hearing none, we will move on, is there anyone wishing to provide testimony on the small business, excuse me, small business grant section of the proposed rules?

Sonia I see you have raised your hand you can go ahead and speak if you would like all stop

SPEAKER:

Thank you, this is (unknown name) on the paid medical leave (indiscernible), I'm just questioning if this section says employer may apply for one grant, whether that really means receive or be approved for because my understanding is if you are not approved, you can apply many times, you can only just receive one grant?

JASON BARRETT:

Sonia, are you able to rephrase your question as a comment?

SPEAKER:

I think this section would more accurately read small business can receive only one grant, rather than apply for only one grant.

JASON BARRETT:

Right, thank you for that comment Sonia. Is there anyone else who would like to provide testimony for the small business grant section of the proposed rules?

Hearing none we will move on, is there anyone who would like to provide testimony on the documenting a family relationship section of the proposed rules?

SPEAKER:

This is Sonia Charles again from paid medical leave, they could be really helpful if the department would give guidance onto what sort of proof would be required for the expanded definition of family, whether

an attestation to the nature of the family relationship will be sufficient, without that guidance, I fear that applicants will be unnecessarily delayed in having their applications processed because they're not certain of exactly what the department needs to make that decision.

JASON BARRETT:

Thank you Edsonya.

SPEAKER:

This is Sherry Pullin from Reed group, I have comments on this section.

JASON BARRETT:

Could you spell your name?

SPEAKER:

Last name is Pullin first name is Sherry, SHeri.... First we echo the previous comment in regard to clarifying what exactly is needed and what counts as sufficient documentation or information in addition to that, we would suggest clarifying the… Where it says documentation clarification, whether the information these needs to be written information or whether it can be oral information such as a Q and A that the employee answers over the phone. And we also suggest clarifying whether an employer or the department can deny a claim if no documentation is received from the employee.

JASON BARRETT:

Thank you we appreciate the comment.

SPEAKER:

My name is (unknown name) can you hear me?

JASON BARRETT:

We can thank you Norma.

SPEAKER:

I feel there needs to be additional detail here, I feel the new definition of family member is overly vague and overly broad. May request, is a little soft for me but in addition to that, we don't know what this documentation is that would be sufficient. That is our concern for me.

JASON BARRETT:

Thank you for that.

SPEAKER:

This is Marilyn Watkins of the economic opportunity Institute. I would offer that ensuring that if there are any additional clarifications inserted in the rule, that it be... That any kind of attestation or documentation requirement be not onerous, that people not be required to go through hoops that would prevent people who under the law and under the intent of the legislature in expanding this definition would be potentially put off from even applying because of a seeming burden of providing proof of potentially very personal... Of a very personal nature. To be very, very cautious in terms of requiring anything onerous on the part of the employee... Workers applying for this that would be counter to the intent of the decision. Thank you.

JASON BARRETT:

Thank you Marilyn.

Is call what you provide is there anyone else who would like to provide testimony on the documenting a family relationship section of the proposed rules?

Hearing none, we will move on to the final section. Is there anyone on the call who would like to provide testimony on the attestation section of the proposed rules?

Hearing none, I do want to open it up one last time to those who who may have joined us late, just a reminder that this is a new platform we are using to host this call so if you are joining us through computer, you can unmute yourself using the microphone icon on your computer, if you are joining us by phone you can unmute yourself using *six. Is there any one who would like to comment on any of the sections. Patricia I see your handout.

SPEAKER:

My name is Patricia (unknown name) from Lincoln financial group. And I have a comment on the definitions of the proposed rules.

JASON BARRETT:

Go ahead.

SPEAKER:

Specifically, the provision: subsection 3 of the definitions that state: pandemic leave assistance is only available for claimed years beginning between January 1, 2021 and March 31, 2020 to. So, I comment is that is the intent of the department to extend the availability of pandemic leave assistance to the claimed year… And not the claimed year between January 1, 2021 and March 31 2022. So if somebody files a claim you're saying it is claimed in March 31 20 22, then it would be available and still 2023… Says it is available to leave claims from 2021 through March 31,20 22. So should it be claims or claim years… My suggestion is that it should be claims years.

JASON BARRETT:

Thank you for the comment Patricia.

SPEAKER:

Thank you.

JASON BARRETT:

Lorna I see her hand raised.

SPEAKER:

Yes, thank you I didn't spell my name for you when I gave my testimony earlier and wanted to do that for you. My first name is Lorna: L-O-R-N-A and my last name is Klemanski.

JASON BARRETT:

We very much appreciate it, thank you. Is there any further testimony from anybody joining us today before I conclude the hearing?

In conclusion, this hearing was convened to consider testimony unpaid family and medical leave rulemaking. All oral testimony presented at this hearing and written submissions will become part of the official record.

The deadline for submission of written comments is today, July 27, 2021, you may submit written comments by emailing rules@esd.wa.gov. A final decision regarding after all testimony and written comments have been fully considered which will be on or after July 30, 2021. On behalf of Commissioner Cami Feek thank you for participating and this hearing is adjourned at 9:20 5 AM July 27, 2021.